

RECEIVED
SDNY PRO SE OFFICE

2022 DEC 12 AM 10:12
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEAN J. STURDIVANT,

Write the full name of each plaintiff.

No. _____

(To be filled out by Clerk's Office)

-against-

CITY OF NEW YORK, POLICE DEPT., [New
York City Police Officers, DANIEL FLAHERTY,
Shield No. 25263 and P.O. HABEKOST, Shield
No. 6667, both of the 25th Precinct], and
N.Y.C. Police Officers [John Doe #1 and
John Doe #2, both of the Bronx, N.Y. PCT.].

COMPLAINT

(Prisoner)

Do you want a jury trial?

☐ Yes ☒ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "*Bivens*" action (against federal defendants).

☒ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

SEAN J. STURDIVANT

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

NONE

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

NYSID # 01146823Z and Prisoner ID.# 21-R-0511

Current Place of Detention

The Otisville Correctional Facility, 57 Sanitorium Road, P.O. Box 8, Otisville, New York 10963-0008

Institutional Address

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☒ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:	<table border="0"> <tr> <td>Daniel</td> <td>Flaherty</td> <td>25263</td> </tr> <tr> <td>First Name</td> <td>Last Name</td> <td>Shield #</td> </tr> <tr> <td colspan="3"><hr/></td> </tr> <tr> <td colspan="3">Current Job Title (or other identifying information)</td> </tr> <tr> <td colspan="3">New York City Police Officer</td> </tr> <tr> <td colspan="3"><hr/></td> </tr> <tr> <td colspan="3">Current Work Address 25th Precinct Command located in New York County at 120 East 119th Street, New York, New</td> </tr> <tr> <td>County, City</td> <td>State</td> <td>Zip Code</td> </tr> <tr> <td>York 10035</td> <td></td> <td></td> </tr> </table>	Daniel	Flaherty	25263	First Name	Last Name	Shield #	<hr/>			Current Job Title (or other identifying information)			New York City Police Officer			<hr/>			Current Work Address 25th Precinct Command located in New York County at 120 East 119th Street, New York, New			County, City	State	Zip Code	York 10035								
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V. STATEMENT OF CLAIM (Supported with a brief Memorandum of Law as attached hereto)

Place(s) of occurrence: State of New York, Counties of Bronx and Manhattan (New York County)

Date(s) of occurrence: April 7th, 2021 until April 8th, 2021

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary. On the date(s), starting on April 7, 2022, I was a front-seat passenger of a rental automobile [then] being driven by one Korey McMillian and was in Manhattan (New York) County. There were also two ther female passen-

~~gers also inside the same vehicle (backseat). The driver (Mr. McMillian) had not not committed any type of traffic violation while driving in the geographical area of the 25th police precinct. Yet, New York City Police Officer Daniel Flaherty, Shield No. 25263 and his partner, New York City Police Officer (first name/initial unknown) Habekost, Shield No. 6667, began to "follow" the vehicle I was an occupant in. This "folling of" the vehicle continued all the way to an entirely different Borough (of being the Bronx, New York). The vehicle having been followed by the marked police vehicle from 161th 1st Avenue in Manhattan, all the way to Bruckner Boulevard in the Bronx. Once in the Bronx, the vehicle was converged upon by other police cars that forcibly pulled over the vehicle being driven by Mr. McMillian. These other police officers, having surrounded the vehicle and ordered myself and all other occupants to exit the vehicle with my [our] hands placed upon the head(s). The police present (including P.O. Daniel Flaherty and P.O. Habekost), then forcibly grabbed ahold of me in a very rough manner, and handcuffs were then placed upon me and Mr. McMillian. Guns were also pointed directly at our heads. Without any questioning, I was then placed into the police vehicle of P.O. Flaherty and along with at least six other police officers (from a Bronx Police Precinct), were then searched by way of a pat-frisk, and then a more exploratory search of my pockets of my pants and jacket. My cell-phone was taken, as well as personal identification, and U.S. currency was confiscated. I was then taken to the 25th Police Precinct in Manhattan and booked on false charges of supposedly having possessed "Forged Instuments," and it was falsely claimed that I had on my possession Methylenedioxymethamphetamine (MDMA/"Ectasy Drug"). See: ((Copy of the Felony Complaint Report, dated April 7, 2021, signed by Police Officer Flaherty/2 paged document annexed hereto as Exhibit 1, id.)). I was then procecess at Central Booking in Manhattan and arraigned on the charges before a New York County Criminal Court Judge. The case was assigned to New York County Assistant District Attornet Elizabeth Murphy (#212)-335-3290 (Telephone Number). I was then released upon my own recognizance and told to report back to New York County Criminal Court on the date June 21, 2021. I had not been released from the date of my April 7, 2021 arrest, until April 5, 2021.~~

However, due to my having already been out on a posted bail from an earlier arrest case at the time of the April 7, 2021 arrest case, the court-ordered date of my scheduled reappearance on the "Possession of Forged Instrument and Drug Offenses," collided with and on the same date of June 21, 2021. Upon my appearing

as scheduled back in court on June 21, 2021, I had also turned my self in voluntarily to be sentenced on the weapon (gun) possession case. I received my current[ly] serv[ing] sentence of three-years and to which I am scheduled to be released on parole supervision in May 2023. I never appeared or was ever ordered to be produced before the court to answer the "Forged Instrument and Drug Possession charges" arrested upon by Police Officer Flaherty and his P.O. partner. I was informed that those charges were dismissed by the prosecution for 'want of evidence.' I have yet to have my [approximately] "five-hundred dollars" taken from m returned," Nor has by lawfully possessed debit cards been returned. My cell-phone, has also not been returned to present date. Female police officers were used to search the female occupants of the vehicle [Hane Doe(s) unknown as to identity]. I had no contraband on my person that day.

INJURIES: False arrest; false imprisonment, violation of the Fourth Amendment and violation of Due Process and Equal Protection, Discrimination. If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

Plaintiff suffered and continues to suffer from emotional distress from the police encounter and their conduct. Ecessive and unnecessary force was utilized by the police. Plaintiff's liberty was restricted for an unnecessarily long period of time once the police realized there was no criminal activity on my part as a passenger/occupant of the vehicle. My personal property was wrongfully taken by the police and has not been returned. The police filed a false report of a crime(s) as against me. I was unable to keep a scheduled appointment as a result of the incident, and it cost me opportunity to make lawful wages.

VI. RELIEF Plaintiff seeks monetary (money) damages in the amount of two-hundred-and-twenty-five thousand dollars.

State briefly what money damages or other relief you want the court to order.

That this case be filed with this Court and that the Defendant's Counsel be ordered to serve the identified Defendant police officers. As to any police officer[s] that cannot be identified by the Plaintiff, that the Court order the Defendant's Counsel to provide the information based upon thorough investigation of Counsel, and to serve the identified [additional] "Defendant[s]" with copy of this complaint. Further, that service upon the identified Defendants may be problematic in their acceptance and acknowledgement of service of both the summonses and complaints, and therefore that this Court order that the U.S. Marshalls serve the Defendants with proof of service. That this case proceed to stage of complete and compliant discovery of all documents (e.g. police and District Attorney's reports), before any motion to dismiss by Defendant's Counsel be considered, granted, and/or, denied before proceeding to the stage of a trial by Judge of this Court. That this Court consider conducting of any and all necessary evidentiary hearings and any depositions of the parties before determining the merits, or nonmerits of Plaintiff's claims of his federally-protected Constitutional rights having been violated.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated November 28, 2022		Plaintiff's Signature (Pro-Se)	
Sean J. Sturdivant			
First Name	Middle Initial	Last Name	
Prison Address Otisville Correctional Facility, 57 Sanitorium Road, P.O. Box 8, Otisville, New York 10963-0008			
County, City	State	Zip Code	

Date on which I am delivering this complaint to prison authorities for mailing: November 28, 2022

Plaintiff's Exhibit I
(two-page document / "Felony Complaint")

MEMORANDUM OF LAW

Plaintiff Sean Sturdivant, and appearing pro se before the Court at this time, hereby submits this attached memorandum of law to refute Defendant's or Defendant's Counsel's anticipated motion to dismiss this civil rights complaint. See: (Fed. R. of Civ. Proc., Rule 12[b], id.).

First, plaintiff has a right secured to him by the Fourth Amendment to the United States Constitution, to be free from illegal and otherwise unlawful stops by New York City Police Officers in connection with the vehicle traffic stop that occurred in this case.

In addition, plaintiff, under the proscriptions as outlined in the Fourth Amendment, has a right to be free from unreasonable search and seizures of his person and his personal property without any due justification. Plaintiff had not committed any criminal offense in the presence of the police officers, and the vehicle that plaintiff had been in (seated in the front passenger's seat), had not - to my knowledge - committed any traffic violation. Rather, the two police officers (P.O. Daniel Flaherty, Shield No. 25263, and his partner, P.O. Habekost, Shield No. 6667), and both of the 25th Police Precinct in Manhattan, New York, decided to single out the vehicle and me as one of the many occupants, because of my race and gender. This plaintiff, is a male, light-skinned, but - nonetheless - a black person of African-American descent. The conduct of the two police, gives rise to an existing, or non-existing policy of discriminately harassing one of my nationality, by forcibly stopping the vehicle

and - at gunpoint - ordering myself and all other passegenger to exit the vehicle. I, along with the others, were then ordered (and still at gunpoint), to kneel on the ground with my hands atop my head. The police took an excessive amount of time to investigate whether the vehicle was stolen. It was not. After over an hour of elapsed time and being handcuffed. The police then commenced to [again] search my person by way of pat-frisks, and more exploratory searches of my pockets on my pants and jacket. My cell phone and other aforementioned personal items taken. Taken to New York County and processed in Central Booking for ttumped-up and false charges, I was arraigned in Court, and eventually released.

Based upon the above, Plaintiff has a viable claim for violation of my Fourth Amendment rights to be free from an unreasonable search and seizure. The arrest by police ("Defendants"); ouside of their geogrpahical area of employment, gives rise to a cognizable claim in this Court. See, Brewster v. City of New York, 111 A.D.2d 892 (2d Dept. 1985); People v. Edmonds, 157 Misc.2d 966 (County Ct., Dutchess County 1993); People v. Howard, 115 A.D.2d 321 (4th Dept. 1985); Bugman v. City of Tonawanda, New York, 2022 WL 4287761 (W.D. N.Y. 2022), report and recommendation rejected at 2022 WL 3699 (2022).

A viable claim for false arrest and false imprisonment under both New York State and Federal law is cognizable in this case. See Thompson v. City of New York, 50 Misc.3d 1037, 23 N.Y.S.3d 839 (Sup. Ct., Bronx County 2015); Malicious prosecution, is also viable to allow for trial on this matter. See Gannon v. City of New York, 917 F. F. Supp.2d 241 (S.D.N.Y. 2013); The detention after any stop

beyond a brief investigatory detention, was illegal, and there was no need for the search of my person and the placement of handcuffs. See Thompson v. Clark, 142 S. Ct. 1332, 212 L. Ed.2d 382 (2022); Pennie v. State, 74 Misc.3d 1208(A), 159 N.Y.S.3d 827 (Ct. of Claim, N.Y.S. 2022).

Plaintiff contends that the police stop and search and seizure, was pretextual and based upon discrimination of race and gender. See, U.S. v. Clark, 822 F. Supp990 (W.D.N.Y. 1993).

Accordingly, Plaintiff has submitted this memorandum of law in support of his complaint and in anticipation of Defendant's Counsel seeking to circumvent the well-settled law with regard to my state and federally-protected Constitutional rights having been violated by the Defendant, City of New York and its agent police officers. It appears to have been policy acted out and upon in my illegal arrest.

Dated: November 28, 2022

Respectfully submitted,

(Plaintiff/Undersigned/Pro-Se)

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Sean Sturdivant (M 34),

Defendant.

FELONY

ADA Elizabeth Murphy
2123353290

Police Officer Daniel Flaherty, Shield #25263 of the 25th Precinct, states as follows:

The defendant is charged with:

- | | |
|-------------|--|
| 1 PL 170.25 | Criminal Possession of a Forged Instrument in the Second Degree
(defendant #1: 3 count) |
| 2 PL 220.03 | Criminal Possession of a Controlled Substance in the Seventh Degree
(defendant #1: 1 count) |

On or about April 07, 2021 at about 06:26 AM, at the north east corner of 1st Avenue and East 125th St; in the County and State of New York, the defendant uttered and possessed a forged instrument of a kind specified in section 170.10 of the Penal Law and particularized below with knowledge that the instrument was forged and with intent to defraud, deceive and injure another; the defendant knowingly and unlawfully possessed a controlled substance;

The factual basis for these charges are as follows:

I recovered the following from the defendant's wallet, which I believe to be forged instruments:

- (1) one debit card purporting to be a "Green Dot Debit Card" under the name "My Car." The card states that it is licensed in the United States. I ran the Bank Identification Number ("BIN") of the card, and observed that the card was registered in Indonesia.
- (2) two New York State Key Bank unemployment cards. The front of these cards say "Mastercard by Key Bank". I ran the BIN and the cards were registered to Mastercard by Chase Bank.

I observed Police Officer Habekost, shield 6667 of the 25th Precinct, recover Methylenedioxymethamphetamine ("MDMA") from the defendant's person. I have

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

FELONY

-against-

Sean Sturdivant (M 34),

Defendant.

ADA Elizabeth Murphy
2123353290

examined the substance and believe it to be MDMA based on my training and experience as a police officer in the identification of drugs, and my prior experience making drug related arrests.

False statements made in this written instrument are punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law, and as other crimes.


Police Officer Daniel Flaherty

Date

4/7/21

Time

2020

3127770

Sean Sturdivant / *Dir. #21R-0511*
Otisville Correctional Facility
57 Sanitorium Road, P.O. Box 8
Otisville, New York 10963-0008

November 28, 2022

Honorable Ruby J. Krajick
Chief Clerk of the Court
(c/o Pro Se Filings Clerk's Office)
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York , New York 10007-1312

Re: Sturdivant v. City of New York
(Filing of 42 U.S.C. § 1983
Civil Rights Complaint and my
enclosed filing fee in the amount
of \$ 402 dollars/Money Order)

Clerk of Court:

Good day to you. Please acknowledge one completed copy of my 42 U.S.C. § 1983 Civil Rights Complaint for the prompt filing with your Court.

I have also forwarded here along with, a money-order in the amount of four-hundred-and-two dollars as is required of me for the filing fee(s). I am a pro se litigant before this Court at this time.

Please kindly forward me a conformed copy (with Court's stamp and the Index/Docket Number), as well as copy of the Order(s) of this Court from the assigned Judge of the Court.

To the extent that I am unable to identify any unknown Defendant, I would ask the Court's Order to direct the defendant's Counsel to provide me with the names and address[es], as well as the official title of any such un-named "Defendants" listed in my complaint as either "John or jane Doe(s). See Valentin v. Dinkins, 121 F.3d 72, 76 (2d Cir. 1997).

SS/
Enclosures


Sincerely, *Sean Sturdivant*

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S.D.N.Y.

OTISVILLE

Correctional Facility

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12/06/2022
US POSTAGE \$001.68⁰

ZIP 10963
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USMP3
SDNY

Honorable Ruby J. Kravick
Chief Clerk of the Court
Office of the Clerk of Court
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse Bldg.
500 Pearl Street
New York, New York 10007-1312

"Legal Mail"

